

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1582

IN THE MATTER OF:

Application of THE BALTIMORE	)	Served July 30, 1976
AND ANNAPOLIS RAILROAD COMPANY	)	
for Certificate of Public	)	Application No. 947
Convenience and Necessity to	)	
Perform Charter Operations	)	Docket No. 334

By Order No. 1578, served July 9, 1976, the Commission scheduled for public hearing Application No. 947 of The Baltimore and Annapolis Railroad Company (B&A). As initially filed, Application No. 947 sought authority to transport passengers together with their baggage, over irregular routes, in charter operations, from points within the Metropolitan District to points within the Metropolitan District. On July 22, 1976, B&A filed an amendment to Application No. 947, a motion for continuance, and a motion to dismiss and/or stay the amended application.

The amendment sets forth that B&A is filing the application under protest. The bases for the protest are stated to be that the special and charter party services rendered by B&A are authorized by the Interstate Commerce Act and the rules and regulations promulgated thereunder and that B&A's special and charter party services are exempt from the jurisdiction of this Commission under and by virtue of Article XII, Section 20(a)(2) of the Compact. The Commission shall accept the amendment of Application No. 947 with respect to charter party service. However, with respect to special operation services, B&A has not sought authority to render such operations and that portion of the amendment will not be considered.

B&A has requested the Commission to continue the scheduled public hearing to August 23, 1976, or such other date as shall be agreeable to the Commission and counsel for the protestants.



In support of the motion, co-counsel who was formally retained by B&A on July 21, 1976, states that he will not have sufficient time to prepare for the presentation of all the evidence required to be submitted in this proceeding. The motion also states that witnesses will have to be called from distant points within the United States or their depositions taken prior to the date set for hearing and that prospective witnesses will have to be contacted and interviewed. The motion finally states that the Commission should act upon B&A's motion to dismiss and/or stay the amended application prior to the public hearing.

Pursuant to the provisions of Commission Rule of Practice 7-06, the Commission shall grant the motion for continuance. B&A has established good cause based upon its representation that witnesses from distant points will be sponsored at the public hearing. The other bases in support of the motion do not jointly or severally constitute good cause for the requested postponement of the public hearing.

In its motion for continuance, B&A stated that it has been engaged in transporting passengers in accordance with the authority set out in its Certificate of Public Convenience and Necessity No. MC 102299 Sub 7 issued by the Interstate Commerce Commission (ICC). The ICC certificate authorizes the transportation of passengers together with their baggage, express and newspapers, over regular routes, between Washington, D. C., and Fort George G. Meade, Md., serving all intermediate points except those between Washington and Laurel, Md., including Laurel and between the junction of Maryland Highways 175 and 713 and the junction of Maryland Highways 176 and 170 at or near Harmans, Md., serving all intermediate points. The regular route operation between Washington, D. C., and Fort George G. Meade, Md., involves transportation from a point within the Metropolitan District to a point beyond the Metropolitan District and the regular route operation along Maryland Highways 713 and 176 involves transportation between points beyond the Metropolitan District. Neither regular route operation would constitute passenger transportation for hire subject to the Commission's jurisdiction. Likewise, neither regular route operation is the subject of B&A's Application No. 947. To the extent that B&A currently is performing charter operations, over irregular routes, from points within the Metropolitan District to points within



the Metropolitan District, the passenger transportation for hire would be subject to this Commission's jurisdiction. Accordingly, B&A shall be directed to cease and desist from rendering any operations subject to this Commission's jurisdiction until properly authorized to do so.

B&A has requested the Commission to dismiss and/or stay all proceedings involving Application No. 947 as amended. B&A submits that the Commission does not have jurisdiction over the charter operations. B&A contends that its certificate from the ICC authorizes the performance of the charter operations set forth in Application No. 947 as amended. B&A argues that it has incidental rights pursuant to the provisions of Section 207(c) of the Interstate Commerce Act and that those rights were not affected by the enactment of the Compact.

Part II, Section 208(c) of the Interstate Commerce Act is applicable to the transportation of special and chartered parties. That provision merely permits the transportation of special or chartered parties to any place under such rules and regulations as the Interstate Commerce Commission may prescribe. Such rules and regulations have been prescribed and permit any common carrier of passengers by motor vehicle to transport special or chartered parties (a) which originate at any point or points on the regular route or routes, or at any off-route point or points, authorized to be served by such carrier, or (b) which originate at any point or points within the territory served by its regular route or routes. Title II, Article XII, Section 20(a)(2) of the Compact is applicable to the suspension of the Interstate Commerce Act and Certificate of Public Convenience and Necessity issued pursuant thereto. That section provides, inter alia, the following:

"Upon the date this Act becomes effective, Certificates of Public Convenience and Necessity or Permits issued by the Interstate Commerce Commission to any carrier subject to the jurisdiction of this Commission shall be suspended only during the existence of this compact, provided such suspension shall not affect the authority of such certificate or permit holder to transport special and chartered parties as now authorized by the Interstate Commerce Act and the rules and regulations promulgated thereunder by the Interstate Commerce Commission, notwithstanding any other provisions of this Act."



The section clearly was intended to suspend the ICC Certificate of Public Convenience and Necessity issued to any carrier subject to the jurisdiction of the Commission. The proviso clause was necessary to insure that carriers applying for "grandfather" rights under Title II, Article XII, Section 4(a) of the Compact would be issued authority to render ICC specified regular route operations as well as the unspecified incidental special and chartered parties operations resulting from the provisions of Part II, Section 208(c) of the Interstate Commerce Act.

B&A's ICC Certificate of Public Convenience and Necessity No. 102299 Sub 7 authorizes regular route operations beyond the jurisdiction of this Commission. As a result, that ICC Certificate of Public Convenience and Necessity has not been suspended by the provisions of the Compact, Title II, Article 20(a)(2). However, the issue presented by B&A's motion to dismiss and/or stay Application No. 947 is whether this Commission has jurisdiction over charter operations performed within the Metropolitan District as an incidence of the provision of regular route operations pursuant to an ICC Certificate of Public Convenience and Necessity.

The applicability of the Interstate Commerce Act to such operations clearly has been suspended. The Compact, Title II, Article XII, Section 20 provides as follows:

"Upon the date this Act becomes effective, the applicability of all laws of the signatories, relating to or affecting transportation subject to this Act and to persons engaged therein, and all rules, regulations and orders promulgated or issued thereunder, shall except to the extent in this Act specified, be suspended, except that --."

The ICC clearly no longer has jurisdiction of the proposed charter operations. This Commission has been granted jurisdiction of the proposed operations. See Compact, Title II, Article XII, Section 1.

B&A also contends that neither the Commission nor any other party has ever raised any issue or notified B&A that it was rendering unlawful charter operations within the Metropolitan District, that B&A would have filed a "grandfather" appli-



cation, that B&A did not request a certificate of public convenience and necessity because it was never notified by the Commission to do so and it did not have actual or implied knowledge that it should do so, and that the Compact, Title II, Article XII, Section 4(a) does not contain language requiring an application for such authority. These contentions relate to the question of fitness and not to the issue of jurisdiction. Accordingly, the Commission shall consider these matters as part of its formal decision on Application No. 947 as amended.

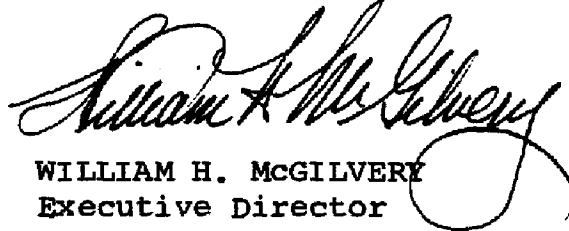
**THEREFORE, IT IS ORDERED:**

1. That Application No. 947 filed by The Baltimore and Annapolis Railroad Company be, and it is hereby, amended to include a provision indicating that the application has been filed under protest.
2. That the motion for continuance filed by The Baltimore and Annapolis Railroad Company be, and it is hereby, granted.
3. That the public hearing scheduled for August 2, 1976, by Order No. 1578, served July 9, 1976, be, and it is hereby, cancelled.
4. That amended Application No. 947 of The Baltimore and Annapolis Railroad Company be, and it is hereby, scheduled for public hearing to commence Monday, August 30, 1976, at 9:30 A. M., in the Hearing Room of the Commission, Room 314, 1625 I Street, N. W., Washington, D. C.
5. That The Baltimore and Annapolis Railroad Company be, and it is hereby, directed to cease and desist from rendering any passenger transportation for hire between points solely within the Metropolitan District, until further order of the Commission.
6. That the motion to dismiss and/or stay the amended application filed by The Baltimore and Annapolis Railroad Company be, and it is hereby, denied.



7. That the provisions of Order No. 1578, served July 9, 1976, not otherwise altered or modified as hereinbefore set forth, be, and they are hereby, incorporated herein and made a part hereof.

BY DIRECTION OF THE COMMISSION:



WILLIAM H. MCGILVERY  
Executive Director

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